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this Memorandum Decision shall not be
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collateral estoppel, or the law of the case.

APPELLANT PRO SE:

AARON ISRAEL
Westville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

AARON ISRAEL and)	
GARY ROBERTSON,)	
)	
Appellants-Petitioners,)	
)	
vs.)	No. 46A03-0607-CV-335
)	
J. DAVID DONAHUE, ET AL.,)	
)	
Appellees-Respondents.)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0606-PL-178

October 13, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner Aaron Israel appeals from the trial court's order dismissing his petition against appellees-respondents J. David Donahue, et al. Israel argues that the trial court dismissed his petition based upon an erroneous conclusion that it did not have jurisdiction over his claims. Concluding that the trial court has subject matter jurisdiction over Israel's claims, we reverse and remand for further proceedings consistent with this opinion.

FACTS

Israel is an inmate at the Westville Control Unit (WCU), a maximum security facility apparently modeled after the federal "Supermax" prison. See DOC Moving Mentally Ill From "Supermax," Indianapolis Star, June 1, 2006, available at <http://www.indystar.com> (last visited Sept. 26, 2006); U.S. Dep't of Justice, Supermax Prisons: Overview and General Considerations, at <http://www.nicic.org/pubs/1999/014937.pdf#search=%22supermax%22> (last visited Sept. 28, 2006). On June 7, 2006, Israel filed a petition against multiple individuals employed by the Department of Correction (DOC) entitled "Verified Petition for Judicial Review of Administrative Decision Violative of United States and Indiana Constitution[s] and Indiana Code/Policy and/or a Petition for Writ of Mandate to Either Enjoin Non-Compliance or Order Compliance with the Law." Appellant's Br. p. 26.¹ Essentially, Israel contends that the conditions of his confinement at WCU, including limited or nonexistent legal access, solitary confinement, cell characteristics, daily routine, and

¹ Israel attached his appendix to his brief and paginated the appendix consecutively to the page numbers of his brief. Hence, page 26 of Israel's brief is actually part of his appendix.

treatment of inmates by the security guards, violate the state and federal constitutions and multiple provisions of the Indiana Code. He requests relief in the form of an order requiring the DOC to comply with the law or an injunction preventing DOC from continuing to treat the WCU inmates in this allegedly illegal and unconstitutional fashion.

On June 7, 2006—the same day on which Israel filed his petition—the trial court dismissed his petition with prejudice, finding as follows:

[Israel's petition claims that] there has been interference with his ability to do legal research, unconstitutional restrictions and denial of access to the courts; no legal assistance program or satellite, "law library"; not enough supplies, etc. Plaintiff seeks injunctive relief. In essence, the plaintiff directs the Court to review the policies of the Department of Corrections [sic]. This is outside of the court's jurisdiction.

The Court finds that pursuant to Indiana Code [section] 34-58-1-2(a)(2), that the Court cannot grant relief on the plaintiff's claim.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED pursuant to Indiana Code [section] 34-58-1-3 that the plaintiff may not proceed and this matter is now dismissed, with prejudice.

Appellant's Br. p. 38.² Israel now appeals.

DISCUSSION AND DECISION

The trial court dismissed Israel's petition based solely on a conclusion that it lacked jurisdiction—presumably, subject matter jurisdiction—over Israel's claims. Although it did not elaborate upon its reasoning, we assume that the trial court based this conclusion upon Indiana Code section 4-21.5-2-5, which exempts certain agency actions from the

² The caption on the trial court's order omits the second petitioner, Gary Robertson, for reasons not revealed by the record. Robertson is not taking part in this appeal.

Additionally, we observe that the Attorney General's office filed a Notice of Non-Involvement and Motion for Correction of the Record, informing us that because the trial court dismissed Israel's petition on the same

Administrative Orders and Procedures Act (AOPA) and may strip the courts of subject matter jurisdiction over certain claims made by inmates. Specifically, under certain circumstances, a trial court has no subject matter jurisdiction over claims regarding “[a]n agency action related to an offender within the department of correction” I.C. § 4-21.5-2-5(6); see also Blanck v. Ind. Dep’t of Corr., 829 N.E.2d 505, 510-11 (Ind. 2005) (holding that AOPA does not apply to, and courts have no subject matter jurisdiction over, inmate’s claims regarding prison discipline or misconduct).

It is well settled, however, that the aforementioned statute does not mean that courts lack subject matter jurisdiction over an inmate’s conditions of confinement that allegedly violate his constitutional rights. Ratliff v. Cohn, 693 N.E.2d 530, 547-48 (Ind. 1998). More specifically, “[t]he statute exempting certain DOC actions from the AOPA does not divest the judiciary of subject-matter jurisdiction over alleged violations of . . . statutory and constitutional rights.” Montgomery v. Ind. Dep’t of Corr., 794 N.E.2d 1124, 1127 (Ind. Ct. App. 2003). Inasmuch as Israel’s petition alleges conditions of confinement that violate his statutory and constitutional rights, the trial court erred in concluding that it lacked subject matter jurisdiction over his claims.

Because the trial court dismissed Israel’s petition on the same day it was filed, with no involvement from the respondents, and because it dismissed based only on a lack of jurisdiction, we find ourselves in a similar situation to that encountered in Montgomery:

day it was filed, the respondents were never served and took no part in the litigation below. Consequently, we note that the State has not filed an appellee’s brief in this matter and is not participating in this appeal.

Having no evidence before us, we are constrained to review the narrow issue of whether the trial court lacked subject-matter jurisdiction. Thus, while recognizing that [Israel's] less than artful claims . . . might evoke a negative visceral response, and given the DOC's ability to restrict privileges and rights, that [Israel] might not be entitled to relief . . . , we must remand the matter to the trial court for further action inasmuch as the trial court has subject-matter jurisdiction in this case.

Id. at 1127.

The judgment of the trial court is reversed and remanded for further proceedings consistent with this opinion.

VAIDIK, J., and CRONE, J., concur.